

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

REC'D APR 29 1990
REGIONAL OFFICE
OAA-5-90-009

IN THE MATTER OF:

Illinois Cement Company,
LaSalle, Illinois

Respondent.

Docket No.

Proceeding to Assess
Administrative Penalty
under Section 113(d) of the
Clean Air Act
42 U.S.C. § 7413(d)

ADMINISTRATIVE COMPLAINT

AND

NOTICE OF OPPORTUNITY FOR HEARING
ON PROPOSED ORDER ASSESSING CIVIL PENALTY

This administrative action for civil penalties is instituted pursuant to Section 113(d) of the Clean Air Act (Act), 42 U.S.C. § 7413(d), against Respondent, Illinois Cement Company (Illinois Cement). The Complainant is, by lawful delegation, the Director of the Air and Radiation Division of the United States Environmental Protection Agency (U.S. EPA), Region 5. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes the Administrator of the U.S. EPA to issue an administrative penalty order assessing a civil administrative penalty against any person whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of an applicable implementation plan or, among other things, a rule promulgated by U.S. EPA in accordance with the Act.

STATUTORY AND REGULATORY BACKGROUND

1. Section 109 of the Act, 42 U.S.C. § 7409, required the Administrator of the U.S. EPA to publish National Ambient Air Quality Standards (NAAQS) for several pollutants, including particulate matter. The NAAQS for particulate matter is set forth at 40 C.F.R. § 50.6.

2. Section 111 of the Act, 42 U.S.C. § 7411, required the Administrator of U.S. EPA to publish regulations establishing Federal standards of performance for new sources based on technology standards designed to achieve and maintain the NAAQS.

3. In accordance with Section 111 of the Act, U.S. EPA published the final rule of the New Source Performance Standards (NSPS), Subpart A, General Provisions, on December 23, 1971. 36 Fed. Reg. 24877. This rule has been codified at 40 C.F.R. §§ 60.1 through 60.19.

4. In accordance with Section 111 of the Act, U.S. EPA promulgated 40 C.F.R. Part 60, Subpart F, Standards of Performance for Portland Cement Plants, on July 25, 1977. 42 Fed. Reg. 37936. This rule is codified at 40 C.F.R. §§ 60.60 through 60.66.

5. In accordance with Section 111 of the Act, U.S. EPA promulgated 40 C.F.R. Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, on August 1, 1985. 51 Fed. Reg. 31337. U.S. EPA published amendments to the Subpart OOO standards on June 9, 1997. 62 Fed. Reg. 31359. This rule is codified at 40 C.F.R. §§ 60.670 through 60.676.

6. Section 60.60(a) of the Standards of Performance for Portland Cement Plants states that these standards are applicable to affected facilities in portland cement plants including, among other things, conveyor transfer points. 40 C.F.R. § 60.60(a). Section 60.60(b) provides that any facility under Section 60.60(a) that commences construction or modification after August 17, 1971 is subject to these standards. 40 C.F.R. § 60.60(b).

7. 40 C.F.R. § 60.62© provides that on and after the date on which the performance test required to be conducted by Section 60.8 is completed, no owner or operator subject to the Subpart F standards shall cause to be

discharged into the atmosphere from any affected facility other than the kiln and clinker cooler any gases which exhibit 10 percent opacity, or greater.

8. Section 60.670(a)(1) of the Standards of Performance for Nonmetallic Mineral Processing Plants provides that these standards are applicable to affected facilities in fixed or portable nonmetallic mineral processing plants including, among other things, belt conveyors. 40 C.F.R. § 60.670(a)(1). Section 60.670(e) provides that an affected facility under Section 60.670(a) that commences construction, reconstruction, or modification after August 31, 1983 is subject to these standards.

9. 40 C.F.R. § 60.672(b) provides that, not later than 180 days after initial startup as required under 40 C.F.R. § 60.11, no owner or operator shall cause to be discharged into the atmosphere from any transfer point on belt conveyors or from any other affected facility any fugitive emissions which exhibit greater than 10 percent opacity.

10. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19 provide, among other things, that the Administrator may assess a civil penalty against a person of up to \$27,500 per day of violation, up to a maximum administrative civil penalty of \$220,000, whenever the Administrator finds that such person is violating any requirement or prohibition of an applicable NSPS on or after January 31, 1997.

11. Section 114(a) of the Act provides that the Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to, upon, or through any premises and shall, among other things, be allowed to sample any emissions with such procedures and in such manner as the Administrator of the U.S. EPA prescribes to determine, among other things,

whether any person is in violation of any standard of performance under Section 111 of the Act.

GENERAL ALLEGATIONS

12. Paragraphs 1 through 11 are incorporated herein by reference.

13. The Respondent in this proceeding, Illinois Cement, is a partnership or an Illinois corporation with a place of business at 1601 Rockwell Road in LaSalle, Illinois.

14. Illinois Cement is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

15. At all times relevant to this Complaint, Illinois Cement owned a portland cement plant, as defined at 40 C.F.R. § 60.61(a), at 1601 Rockwell Road in LaSalle, Illinois.

16. At all times relevant to this Complaint, Illinois Cement operated a portland cement plant, as defined at 40 C.F.R. § 60.61(a), at 1601 Rockwell Road in LaSalle, Illinois.

17. Illinois Cement's portland cement plant includes a conveyor transfer point after the clinker cooler, i.e., the 433 Tail Pulley transfer point.

18. The 433 Tail Pulley transfer point is an affected facility pursuant to 40 C.F.R. § 60.60(a).

19. Construction or modification of the 433 Tail Pulley transfer point commenced after August 17, 1971.

20. Since the 433 Tail Pulley transfer point is an affected facility on which construction or modification commenced after August 17, 1971, pursuant to 40 C.F.R. § 60.60, the 433 Tail Pulley transfer point is subject

to the Standards of Performance for Portland Cement Plants at 40 C.F.R. §§ 60.60 through 60.66.

21. At all times relevant to this Complaint, Illinois Cement owned and/or operated a limestone quarry at 1601 Rockwell Road in LaSalle, Illinois.

22. The limestone quarry is a "nonmetallic mineral processing plant" as defined at 40 C.F.R. § 60.671.

23. The limestone quarry includes a crusher discharge belt conveyor.

24. The crusher discharge belt conveyor is an affected facility pursuant to 40 C.F.R. § 60.670.

25. Construction, reconstruction, or modification of the crusher discharge belt conveyor commenced after August 31, 1983.

26. Since the crusher discharge belt conveyor is an affected facility on which construction, reconstruction, or modification commenced after August 31, 1983, pursuant to 40 C.F.R. § 60.670, the crusher discharge belt conveyor is subject to the Standards of Performance for Nonmetallic Mineral Processing Plants at 40 C.F.R. §§ 60.670 through 60.676.

27. The limestone quarry includes a stacker feed belt.

28. The stacker feed belt is an affected facility pursuant to 40 C.F.R. § 60.670.

29. Construction, reconstruction, or modification of the stacker feed belt commenced after August 31, 1983.

30. Since the stacker feed belt is an affected facility on which construction, reconstruction, or modification commenced after August 31, 1983, pursuant to 40 C.F.R. § 60.670, the stacker feed belt is subject to the Standards of Performance for Nonmetallic Mineral Processing Plants at 40 C.F.R. §§ 60.670 through 60.676.

31. On October 28, 1998 and March 2, 1999, U.S. EPA performed inspections at the portland cement plant and limestone quarry pursuant to Section 114(a) of the Act.

32. On December 17, 1998, U.S. EPA issued to Illinois Cement a Finding of Violation for the violations described in Counts I through IV of this Complaint.

COUNT I

33. Paragraphs 1 through 32 of this Complaint are hereby incorporated by reference as if fully set forth herein.

34. Illinois Cement conducted the performance test required by 40 C.F.R. § 60.8 on the 433 Tail Pulley transfer point before October 28, 1998.

35. During the October 28, 1998 inspection, U.S. EPA conducted observations of opacity of gases discharged into the atmosphere from the 433 Tail Pulley transfer point using Method 9 in Appendix A to 40 C.F.R. Part 60 for the purpose of determining compliance with the opacity limitations at 40 C.F.R. § 60.62(c).

36. U.S. EPA calculated the opacity readings it collected into six-minute averages. The six-minute averages were found to be 37.7%, 39.2%, 38.5%, 30.4%, and 25.0%.

37. Based on the opacity readings collected by U.S. EPA, on October 28, 1998, Illinois Cement discharged gases into the atmosphere that exhibited 10 percent or greater opacity from the 433 Tail Pulley transfer point.

38. Illinois Cement's discharge of gases into the atmosphere that exhibited 10 percent or greater opacity from the 433 Tail Pulley transfer

point constitutes a violation of 40 C.F.R. § 60.62© and Section 111 of the Act.

COUNT II

39. Paragraphs 1 through 38 of this Complaint are hereby incorporated by reference as if fully set forth herein.

40. Initial startup of the crusher discharge belt conveyor as required by 40 C.F.R. § 60.11 occurred more than 180 days before October 28, 1998.

41. During the October 28, 1998 inspection, U.S. EPA conducted observations of opacity of fugitive emissions discharged into the atmosphere from the crusher discharge belt conveyor using Method 9 in Appendix A to 40 C.F.R. Part 60 for the purpose of determining compliance with the opacity limitations at 40 C.F.R. § 60.670(b).

42. U.S. EPA calculated the opacity readings it collected into six-minute averages. The six-minute averages were found to be 24.4%, 46.9%, 48.8%, 41.3%, and 46.5%.

43. Based on the opacity readings collected by U.S. EPA, on October 28, 1998, Illinois Cement discharged fugitive emissions into the atmosphere that exhibited greater than 10 percent opacity from the crusher discharge belt conveyor.

44. Illinois Cement's discharge of fugitive emissions into the atmosphere that exhibited greater than 10 percent opacity from the crusher discharge belt conveyor constitutes a violation of 40 C.F.R. § 60.670(b) and Section 111 of the Act.

COUNT III

45. Paragraphs 1 through 44 of this Complaint are hereby incorporated by reference as if fully set forth herein.

46. Initial startup of the stacker feed belt as required by 40 C.F.R. § 60.11 occurred more than 180 days before October 28, 1998.

47. During the October 28, 1998 inspection, U.S. EPA conducted observations of opacity of fugitive emissions discharged into the atmosphere from the stacker feed belt transfer point using Method 9 in Appendix A to 40 C.F.R. Part 60 for the purpose of determining compliance with the opacity limitations at 40 C.F.R. § 60.670(b).

48. U.S. EPA calculated the opacity readings it collected into six-minute averages. The six-minute averages were found to be 18.3%, 24.4%, 16.7%, 10.0%, 19.4%, and 10.4%.

49. Based on the opacity readings collected by U.S. EPA, on October 28, 1998, Illinois Cement discharged fugitive emissions into the atmosphere that exhibited greater than 10 percent opacity from the stacker feed belt transfer point.

50. Illinois Cement's discharge of fugitive emissions into the atmosphere that exhibited greater than 10 percent opacity from the stacker feed belt transfer point constitutes a violation of 40 C.F.R. § 60.670(b) and Section 111 of the Act.

COUNT IV

51. Paragraphs 1 through 50 of this Complaint are hereby incorporated by reference as if fully set forth herein.

52. Illinois Cement conducted the performance test required by 40 C.F.R. § 60.8 on the 433 Tail Pulley transfer point before October 28, 1998.

53. During the March 2, 1999 inspection, U.S. EPA conducted observations of opacity of gases discharged into the atmosphere from the 433 Tail Pulley transfer point using Method 9 in Appendix A to 40 C.F.R. Part 60 for the purpose of determining compliance with the opacity limitations at 40 C.F.R. § 60.62(c).

54. U.S. EPA calculated the opacity readings it collected into a six-minute average. The six-minute average was found to be 16.9%.

55. Based on the opacity readings collected by U.S. EPA, on March 2, 1999, Illinois Cement discharged gases into the atmosphere that exhibited 10 percent or greater opacity from the 433 Tail Pulley transfer point.

56. Illinois Cement's discharge of gases into the atmosphere that exhibited 10 percent or greater opacity from the 433 Tail Pulley transfer point constitutes a violation of 40 C.F.R. § 60.62© and Section 111 of the Act.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

57. Pursuant to Section 113(d) (1) of the Act, 42 U.S.C. § 7413(d) (1), and 40 C.F.R. Part 19, the Administrator of the U.S. EPA may assess a civil penalty of up to \$27,500 per day of violation, up to a total of \$220,000, for, among other things, violations of any requirement of an applicable NSPS on or after January 31, 1997. Section 113(e) (1) of the Act, 42 U.S.C. § 7413(e) (1), requires Complainant to take the following factors into consideration in determining the amount of any penalty assessed under Section 113: the size of Illinois Cement's business; the economic impact of the proposed penalty on

Illinois Cement's business; Illinois Cement's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by credible evidence (including evidence other than the applicable test method); payment by Illinois Cement of penalties previously assessed for the same alleged violations; the economic benefit of noncompliance; and the seriousness of the alleged violations; as well as such other factors as justice may require.

58. Based upon the facts alleged in this Complaint and upon the seriousness and duration of the violations alleged, and after consideration of the factors set forth in Section 113(e) (1) of the Act, 42 U.S.C. § 7413(e) (1) (see paragraph 57 above), U.S. EPA hereby proposes to issue a Final Order to Illinois Cement assessing a penalty in the amount of \$55,000. In developing the penalty proposed in this Complaint, Complainant has taken into account the particular facts and circumstances of this case with specific reference to U.S. EPA's Clean Air Act Stationary Source Penalty Policy, a copy of which is enclosed with this Complaint.

59. In determining the proposed penalty amount, U.S. EPA considered the actual or possible harm due to the violations. One factor related to actual or possible harm is the duration of the alleged violations. In this instance, U.S. EPA calculated the penalty based on 2 days of excess particulate emissions.

60. In determining the proposed penalty amount, U.S. EPA considered the actual or possible harm due to the violations. One factor related to actual or possible harm is the air quality status of the area in which the violating source is located. Illinois Cement is located in an attainment area

for particulates, and U.S. EPA considered this attainment status in assessing this component of the penalty.

61. In determining the proposed penalty amount, U.S. EPA considered the actual or possible harm due to the violations. One factor related to actual or possible harm is the magnitude of the violation. U.S. EPA calculated the proposed penalty based on Respondent's violative opacity emissions rate being 39.2 percent above the allowable rate for the 433 Tail Pulley transfer point and 48.8 percent above the allowable rate for the crusher discharge belt.

62. In determining the proposed penalty amount, U.S. EPA considered the size of Respondent's business in determining the appropriate penalty. Illinois Cement's net assets were found to be \$13,353,655. The proposed penalty accounts for this size of Illinois Cement's business.

63. The penalty must be sufficient to preclude the violator from deriving monetary benefit due to its having avoided or delayed expenditures that would have insured compliance with the CAA, both for deterrence purposes and because other regulated entities have incurred similar expenses in maintaining compliance with the CAA. In this case, U.S. EPA calculated the economic benefit resulting from Respondent's delay in expending funds to keep its air pollution control equipment functioning adequately. Such delayed expenditure resulted in an economic benefit to Respondent of \$0.

64. The proposed penalty of \$55,000 reflects a presumption of Illinois Cement's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business.

65. U.S. EPA developed the penalty proposed in this Complaint based on the best information available to U.S. EPA at this time, and U.S. EPA may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the appropriateness of the penalty.

66. Illinois Cement shall pay the \$55,000 civil penalty by certified or cashier's check, payable to "Treasurer, the United States of America," within 30 days of the filing date of this document, and shall be delivered, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency, Region 5
Regional Finance Office
P.O. Box 70753
Chicago, Illinois 60673

Illinois Cement shall include on the check the name of the case and the Docket Number of the case. Illinois Cement shall simultaneously send copies of the check and transmittal letter to:

Jodi Swanson-Wilson, Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Howard Caine (AE-17J)
Environmental Engineer
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Christine Liszewski (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

OPPORTUNITY TO REQUEST A HEARING

63. Section 113(d) (2) of the Act, 42 U.S.C. § 7413(d) (2), requires the Administrator of the U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, Illinois Cement has the right to request a hearing to contest any material fact alleged in the Complaint and/or to contest the amount of the proposed penalty. In order to request a hearing, Illinois Cement must specifically make such request in the Answer, as discussed in Paragraphs 65 through 70, below.

64. The hearing requested regarding the Complaint will be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 FR 4316 (February 4, 1992), a copy of which accompanies this Complaint.

ANSWER

65. To avoid being found in default, Illinois Cement must file a written Answer to this Complaint with the Regional Hearing Clerk (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, within 30 calendar days of Illinois Cement's receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal holidays shall be included, except when a time period expires on such, in which case the time period shall be extended to the next business day.

66. Illinois Cement's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, or must state clearly that Illinois Cement has no knowledge regarding a particular factual allegation which it cannot admit, deny, or explain, in which case the allegation will be deemed denied. Illinois Cement's Answer also specifically shall state:

1. The circumstances or arguments which Illinois Cement alleges constitute grounds for defense; and
2. The facts that Illinois Cement intends to place at issue; and
3. Whether Illinois Cement requests a hearing as discussed in Paragraphs 63 through 64, above.

67. Illinois Cement's failure to deny any factual allegation in this Complaint shall constitute admission of the alleged fact.

68. Illinois Cement must send a copy of its Answer and of any documents subsequently filed in this action to Christine Liszewski, Associate Regional Counsel at the following address:

Christine Liszewski
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Illinois Cement may telephone Ms. Liszewski at (312) 886-4670.

69. If Illinois Cement fails to file a written Answer, with or without a Request for Hearing, within 30 calendar days of its receipt of this Complaint, the Administrator of the U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of Illinois Cement's right to a

hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator pursuant to 40 C.F.R. §§ 22.27 or 22.31.

70. Failure to comply with an administrative penalty order subjects Illinois Cement to the provisions relating to the imposition of interest, penalty and enforcement expenses set forth at Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). Interest will accrue at the rate established pursuant to 26 U.S.C. § 6621(a)(2). The U.S. EPA will also apply a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Illinois Cement's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter. In addition, Illinois Cement will be required to pay, in addition to all other penalties and interest, the United States' enforcement expenses, including, but not limited to, attorneys fees and costs incurred by the United States for collection proceedings. In such a collection proceeding, the validity, amount, and appropriateness of the administrative penalty assessed shall not be subject to review.

SETTLEMENT CONFERENCE

71. Whether or not Illinois Cement requests a hearing, Illinois Cement may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request an informal settlement conference, Illinois Cement should write to Howard Caine, Air and Radiation Division (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Caine at (312) 353-9685.

72. Illinois Cement's request for an informal settlement conference does not extend the 30 calendar day period during which it must submit a written Answer to this Complaint. Illinois Cement may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. The U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, the U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Consent Order (CACO). Illinois Cement's agreement to a CACO shall constitute a waiver of its right to request a hearing on any matter stipulated to therein.

73. Neither assessment nor payment of an administrative civil penalty shall affect Illinois Cement's continuing obligation to comply with the Act, or any other Federal, State, or local law or regulation.

3-26-99

Date

Richard C. Karl

Richard C. Karl, Acting Director
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard (A-18J)
Chicago, Illinois 60604

OAA-5-99-009

CERTIFICATE OF SERVICE

RECEIVED
REGIONAL CLERK
99 MAR 29 11:56

I certify that on this 29th day of March 1999, I filed the original Clean Air Act Administrative Complaint issued to Illinois Cement Company, with:

Regional Hearing Clerk
77 West Jackson Boulevard
Chicago, Illinois 60604

U.S. PROTECTIVE SERVICE
REGION V

deposited in the U.S. Mail, certified mail, return receipt requested, a copy of the Clean Air Act Administrative Complaint, a copy of the Clean Air Act Stationary Source Civil Penalty Policy and the Part 22 Rules of Practice addressed to the following Respondents:

Wayne W. Emmer
President
Illinois Cement Company
1601 Rockwell Road
LaSalle, Illinois 61301-0442

Certified Mail Number: P 140 778 979

Prentice Hall Corporation
33 North LaSalle Street
Chicago, Illinois 60602-2607

Certified Mail Number: P 140 778 980

and, mailed copies of the Clean Air Act Administrative Complaint issued to The Illinois Cement Company to:

Shell Bleiweiss, Esq.
Chicago Bar Association Building
321 South Plymouth Court
Chicago, Illinois 60604-3990

David Kolaz, Chief
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency

Richard Jennings, Manager
Region II
Illinois Environmental Protection Agency

3/29/99
Date

Betty Williams
Betty Williams, Secretary
AECAS (IL/IN)

CAA-5-99-009